IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.50 OF 2007

Sampat Chimaji Dige : Appellant
(Orig.Plaintiff)

V/s.

Sanjay Shankar Dige & Anr. : Respondents
(Orig.Defendants)

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Mr.Chandrakant Chavan for the appellant.

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CORAM : S.A.BOBDE, J.

DATE : JULY 10, 2007.

P.C.

1. This Second Appeal is by the plaintiff who had sued the respondents for a declaration of ownership of gat no.552, original survey no.169/2 at Medha. According to the appellant, there was an oral partition of gat no.552 in the presence of two panchas in May 1978. The Courts below came to the conclusion that there is no such partition and, therefore, have concurrently held that the appellant is not entitled to declaration and injunction.

2. Mr.Chavan, the learned counsel for the appellant, submitted that the Courts below have committed an error in

not granting a declaration. The submission cannot be accepted. The appellant has failed to prove the partition of the property. This means that the property was a joint family property and the plaintiff was not entitled to any injunction. It is true that the appellate Court has made a referee to the Record of Rights which record the name of the defendant as the owner, but that is not determinative of the issue. There is a clear finding by the lower appellate Court that the appellant has failed to prove partition and it was, therefore, correct on the part of the lower Appellate Court to refuse the declaration and injunction sought by the plaintiff. There is no merit in the second appeal which does not give rise to any substantial question of law.

3. Dismissed.

S.A. BOBDE, J.